DATO' RAJA IDERIS RAJA AHMAD & ORS A

v.

TENG CHANG KHIM & ORS

COURT OF APPEAL, PUTRAJAYA B
LOW HOP BING JCA
ABDUL MALIK ISHAK JCA
CLEMENT SKINNER JCA
[CIVIL APPEAL NO: B-01(IM)-255-2011]
16 DECEMBER 2011 C

CIVIL PROCEDURE: *Originating summons - Striking out - Appeal against - Whether reasonable cause of action disclosed - Rules of the High Court 1980, O. 18 r. 19(1)(a) - Whether court has duty to consider prayers sought - Factors to consider - Whether suitable for summary* D *disposal - Whether weak case was ground for striking out - Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd*

CIVIL PROCEDURE: *Declaration - Discretion of court to grant declaration - Originating summons - Prayers for declaratory judgment -* E *Whether proper to strike out if no reasonable cause of action disclosed - Whether court has power to grant declaration even if cause of action did not exist at time of filing application - Specific Relief Act 1950, s. 41 - Rules of the High Court 1980, O. 15 r. 16*

The appellants ('plaintiffs') filed this appeal herein after being F dissatisfied with the decision of the High Court which allowed the respondents' ('defendants') application to strike out the plaintiffs' originating summons ('OS') under O. 18 r. 19 of the Rules of the High Court 1980 ('RHC'). The plaintiffs were members of the State Legislative Assembly of Selangor ('SLA'). They filed an OS G against the defendants in the High Court seeking the following declarations, *inter alia*, (i) that the composition of the Select Committee on Competence, Accountability and Transparency ('SELCAT') did not reflect the balance between the parties within the SLA as required by Standing Orders ('SO') 72(1) and (ii) that H the proceedings and functions of SELCAT had impeded upon matters reserved for the Public Accounts Committee of the SLA under the SO and/or the Selangor State Constitution, and SELCAT had thereby acted in excess of its jurisdiction. Subsequently, the defendants filed an application to strike out the I plaintiffs' OS wherein the said application was allowed by the

A High Court since it disclosed no sustainable cause of action under O. 18 r. 19(1)(a) RHC. Hence this appeal by the plaintiffs. It was the plaintiffs' submission that they had a reasonable cause of action and the court must have heard and determined the OS on its merits. The defendants on the other hand contended that the B OS should be struck out since the matters complained of did not provide the plaintiffs with a sustainable cause of action which was recognised by the courts. Further, it was the defendants' submission that they could still invoke the striking out procedure although the plaintiffs were merely seeking a declaratory judgment C by way of declarations under O. 15 r. 16 RHC. On the contrary, the plaintiffs subscribed to the view that where the OS was seeking declarations under s. 41 of the Specific Relief Act 1950 ('the Act') and O. 15 r. 16 RHC, there was no requirement to have a cause of action at all. The issues that arose for D consideration herein was: (i) did the OS disclose a reasonable cause of action for it to be considered by the court on merits and (ii) upon a true construction of s. 41 of the Act and O. 15 r. 16 RHC, where the OS prayed for a declaratory judgment in the form of declarations, was it proper to strike out the OS on the ground E that it disclosed no reasonable cause of action.

Held (allowing the appeal; setting aside order of High Court and reinstating the OS)
Per Low Hop Bing JCA delivering the judgment of the court:

F **(1)** In dealing with an application under O. 18 r. 19(1)(a) RHC, the duty of the court is to consider the pleadings in a writ action, or, in the OS herein, the prayers sought by the plaintiffs, and to determine whether the OS was "obviously unsustainable" (*Bandar Builder Sdn Bhd & Ors v. United* G *Malayan Banking Corporation Bhd*; refd). (para 14)

(2) A proper perusal of the OS would bring into focus the plaintiffs' allegations of the defendants' breaches of the SO, the fundamental rules of natural justice and the Selangor State H Constitution. These alleged breaches clearly disclosed a reasonable cause of action which required further ventilation by the parties on merits, pertaining to substantive issues or questions of law of constitutional importance. Hence, the determination on such alleged breaches were eminently I unsuitable for summary disposal under the striking out procedure. (para 21)

(3) So long as the OS raised some questions which was fit to be decided by a judge, the mere fact that the case was weak and not likely to succeed was no ground for striking out. A court should not strike out a claim or an OS concerning an area of law which is in the process of development or evolution. As such, the plaintiffs should not be summarily deprived of an opportunity to argue their case. (para 21)

(4) A declaratory judgment states the rights or legal position of the parties as they stand without altering them in any way. By virtue of s. 41 of the Act and O. 15 r. 16 RHC, the court's jurisdiction to make a declaratory order is unlimited, subject only to its own discretion. The court has power to grant a declaration irrespective of whether an application has a cause of action or not and even if a cause of action did not exist at the time of filing the application. (para 28)

[The originating summons was reinstated and remitted to the High Court to be heard and disposed of on merits before another judge].

Bahasa Malaysia *Translation Of Headnotes*

Perayu-perayu ('plaintif-plaintif') telah memfailkan rayuan ini setelah tidak berpuas hati dengan keputusan Mahkamah Tinggi yang telah membenarkan permohonan responden-responden ('defendan-defendan') untuk membatalkan saman pemula ('SP') plaintif-plaintif di bawah A. 18 k. 19(1)(a) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Plaintif-plaintif merupakan ahli Dewan Undangan Negeri Selangor ('DUN'). Mereka telah memfailkan SP terhadap defendan-defendan di Mahkamah Tinggi dengan memohon deklarasi-deklarasi berikut, antara lain, (i) bahawa komposisi Jawatankuasa Pilihan Khas Mengenai Keupayaan, Kebertanggungjawaban dan Ketelusan ('SELCAT') tidak mencerminkan keseimbangan di antara pihak-pihak dalam DUN seperti yang dikehendaki oleh Peraturan-Peraturan Tetap ('PT') 72(1) dan (ii) bahawa prosiding-prosiding dan fungsi-fungsi SELCAT telah menghalang perkara-perkara yang disediakan untuk Jawatankuasa Akaun-Akaun Awam bagi DUN di bawah PT dan/atau Perlembagaan Negeri Selangor, dan SELCAT telah bertindak melebihi bidangkuasanya. Defendan-defendan pula telah memfailkan permohonan untuk membatalkan SP plaintif-plaintif di mana permohonan tersebut telah dibenarkan oleh Mahkamah Tinggi memandangkan ianya tidak mendedahkan kausa tindakan yang kukuh di bawah A. 18 k. 19(1)(a) KMT. Oleh itu rayuan ini oleh

A plaintif-plaintif. Adalah hujahan plaintif-plaintif bahawa mereka mempunyai kausa tindakan yang munasabah dan mahkamah mesti mendengar dan memutuskan SP berdasarkan meritnya. Defendan-defendan pula berhujah bahawa SP sepatutnya dibatalkan memandangkan perkara-perkara yang diadu tidak membekalkan B plaintif-plaintif dengan suatu kausa tindakan kukuh yang diiktiraf oleh mahkamah. Tambahan, adalah hujahan defendan-defendan bahawa mereka masih boleh membangkitkan prosedur pembatalan walaupun plaintif-plaintif hanya memohon suatu penghakiman pengisytiharan melalui deklarasi-deklarasi di bawah A. 15 k. 16 C KMT. Sebaliknya, plaintif-plaintif pula berpandangan bahawa di mana SP memohon deklarasi-deklarasi di bawah s. 41 Akta Relif Spesifik 1950 ('Akta') dan A. 15 k. 16 KMT, tiada keperluan untuk adanya suatu kausa tindakan. Isu-isu yang dibangkitkan untuk pertimbangan di sini adalah: (i) adakah SP mendedahkan D suatu kausa tindakan yang munasabah bagi ianya dipertimbangkan oleh mahkamah berdasarkan merit dan (ii) atas pentafsiran sebenar s. 41 Akta dan A. 15 k. 16 KMT, di mana SP telah memohon untuk penghakiman pengisytiharan dalam bentuk deklarasi-deklarasi, adakah ianya berpatutan untuk membatalkan SP atas alasan E bahawa ianya tidak mendedahkan kausa tindakan yang munasabah.

Diputuskan (membenarkan rayuan, mengenepikan perintah Mahkamah Tinggi dan menghidupkan semula SP)
Oleh Low Hop Bing HMR menyampaikan penghakiman F mahkamah:

(1) Dalam mengurus suatu permohonan di bawah A. 18 k. 19(1)(a) KMT, adalah tugas mahkamah untuk mempertimbangkan pliding-pliding dalam tindakan writ, atau, dalam SP di sini, permohonan-permohonan yang dituntut oleh plaintif-plaintif, G dan menentukan sama ada SP "sememangnya tidak boleh dibenarkan" (*Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd*; dirujuk).

(2) Suatu penelitian wajar SP akan membawa kepada fokus H alegasi-alegasi plaintif-plaintif berkenaan kemungkiran defendan-defendan terhadap PT, kaedah-kaedah keadilan asasi dan Perlembagaan Negeri Selangor. Kemungkiran yang dialegasikan itu jelas mendedahkan suatu kausa tindakan yang menghendaki hujahan lanjut oleh pihak-pihak atas merit, berkenaan isu-isu I substantif atau pun persoalan undang-undang yang penting.

Oleh itu, penentuan terhadap alegasi kemungkiran sebegitu adalah tidak sesuai untuk diputuskan secara ringkas di bawah prosedur pembatalan.

(3) Selagi SP membangkitkan beberapa persoalan yang sesuai untuk diputuskan oleh seorang hakim, fakta bahawa kes tersebut adalah lemah dan tidak kemungkinan akan berjaya bukanlah alasan untuk dibatalkan. Mahkamah tidak boleh membatalkan suatu tuntutan atau SP berkenaan kawasan undang-undang yang masih dalam proses perkembangan. Oleh itu, plaintif-plaintif tidak sepatutnya terus dihalang suatu peluang untuk menghujahkan kes mereka.

(4) Satu penghakiman pengisytiharan menyatakan hak atau kedudukan undang-undang pihak-pihak seperti ada tanpa mengubah mereka dalam apa jua cara. Melalui s. 41 Akta dan A. 15 k. 16 KMT, bidangkuasa mahkamah untuk membuat perintah pengisytiharan adalah tidak terhad, tertakluk hanya kepada budi bicaranya. Mahkamah mempunyai kuasa untuk memberi deklarasi tanpa mengira sama ada suatu permohonan mempunyai kausa tindakan atau tidak dan walau pun suatu kausa tindakan tidak wujud pada masa pemfailan permohonan itu.

[Saman pemula dihidupkan semula dan dikembalikan ke Mahkamah Tinggi untuk didengar dan diselesaikan berdasarkan merit di hadapan hakim lain.]

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Brett Andrew Macnamara v. Kam Lee Kuan [2008] 7 CLJ 625 HC ***(refd)***

BSN Commercial Bank (M) Bhd v. Pentadbir Tanah Daerah, Mersing [1997] 3 CLJ (Supp) 1 HC ***(refd)***

Cekal Berjasa Sdn Bhd v. Tenaga Nasional Bhd [2006] 8 CLJ 69 HC ***(refd)***

Dewan Singh v. M Thynappa Ltd & Yeo Teck Chiang [1939] 1 LNS 20 HC ***(refd)***

Gan Hwa Kian & Anor v. Shencourt Sdn Bhd [2007] 3 CLJ 538 HC ***(refd)***

Gobind Singh Deo v. Yang DiPertua, Dewan Rakyat & Ors [2010] 9 CLJ 449 HC ***(refd)***

Guaranty Trust Co of New York v. Hannay [1915] 2 KB 536 ***(refd)***

Hj Hussin Hj Ali & Ors v. Datuk Hj Mohamed Yaacob & Ors & Other Cases [1983] 2 CLJ 68; [1983] CLJ (Rep) 165 FC ***(refd)***

Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors [1986] 2 CLJ 209; [1986] CLJ (Rep) 142 SC ***(refd)***

Indah Desa Saujana Corporation Sdn Bhd & Ors v. James Foong Cheng Yuen & Anor [2008] 1 CLJ 651 CA ***(refd)***

Karpal Singh v. Sultan of Selangor [1987] 2 CLJ 342; [1987] CLJ (Rep) 686 HC ***(refd)***

Lim Cho Hock v. Speaker, Perak State Legislative Assembly [1979] 1 LNS 45 HC ***(refd)***

Tan Beng Sooi v. Penolong Kanan Pendaftar (United Merchant Finance Bhd, Intervener) [1995] 2 CLJ 846 HC ***(refd)***

Tengku Mariam Tengku Sri Wa Raja & Anor v. Commissioner for Religious Affairs, Trengganu & Ors [1968] 3 LNS 1 HC ***(refd)***

Tropical Profile Sdn Bhd v. Kerajaan Malaysia, Jabatan Kerja Raya Malaysia & Ors [2008] 1 CLJ 513 HC ***(refd)***

YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener) [2009] 4 CLJ 253 FC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 63, 72

Rules of the High Court 1980, O. 15 r. 16, O. 18 r. 19(1)(a), (2), (3)

Specific Relief Act 1950, s. 41

Other source(s) referred to:

Malaysian Court Practice 2008, Vol 1 pp 1553, 1555 and 1556

For the appellants - Kamarul Hisham Kamaruddin (M M Athimulan, Lim Kon Keen & Siti Maspuah Maulan with him); M/s Athimulan & Co

For the respondents - Tommy Thomas (Nur Ashikin Abdul Rahim with him); M/s Tommy Thomas

[Appeal from High Court, Shah Alam; Originating Summons No: 21-380-2009]

Reported by Kumitha Abdul Majid

JUDGMENT

Low Hop Bing JCA:

Appeal

[1] On 21 March 2011, the Shah Alam High Court allowed the respondents' (defendants') summons in chambers and struck out the appellants' (plaintiffs') Originating Summons (the OS) under O. 18 r. 19 of the Rules of the High Court 1980. Being dissatisfied, the plaintiffs filed this appeal.

(A reference hereinafter to an order and a rule is a reference to that order and rule in the Rules of the High Court 1980).

Factual Background

[2] The plaintiffs are members of the State Legislative Assembly of Selangor ("SLA").

[3] Defendants 1 and 8 refer to one and the same person ie, Dato' Teng Chang Khim (Dato' Teng) who is the Chairman of the SLA Select Committee on Competence, Accountability and Transparency ("SELCAT"), the Chairman of the SLA Committee of Rights and Privileges ("CRP") and the Speaker of the SLA. Both SELCAT and CRP are Committees constituted under the Standing Orders of SLA ("SO").

[4] Defendants 2 to 7 are committee members of SELCAT.

[5] Defendant 9 is the clerk of the SLA.

[6] Defendant 10 is the State Government of Selangor.

[7] The plaintiffs' OS sought the following declarations:

(a) That the composition of SELCAT does not reflect the balance between the parties within the SLA as required by SO 72(1);

(b) That in conducting its hearings publicly and in allowing the publication and dissemination of reports concerning its proceedings prior to the presentation of its formal Report to the SLA, SELCAT has acted in breach of SO 75 and the Constitution of the State of Selangor 1959 ("the Selangor State Constitution");

(c) Dato' Teng as Speaker of the SLA and Chairman of CRP is in a position of conflict when he sits as the Chairman of SELCAT, and therefore all proceedings conducted by SELCAT are null and void, being contrary to the rules of natural justice;

(d) That the proceedings and functions of SELCAT have impeded upon matters reserved for the Public Accounts Committee of the SLA under the SO and/or the Selangor State Constitution, and SELCAT has thereby acted in excess of its jurisdiction;

(e) That the matters deliberated upon by SELCAT are beyond the scope of the matters expressly referred to SELCAT by the SLA and therefore the said proceedings are null and void, being contrary to SO 73(4); and

(f) That the formation of SELCAT and/or the proceedings thereof are null and void and of no effect whatsoever.

Reasonable Cause Of Action Under O. 18 r. 19(1)(a)

[8] At the hearing of the instant Appeal, learned counsel from both sides of the Bar table submitted at great length and covered such issues as the privileges of the SLA, and the position in the United Kingdom and Malaysia. They also relied on the Privileges of Legislative Assembly and Privileges of Parliament respectively under arts. 72 and 63 of the Federal Constitution.

[9] More specifically, Mr Tommy Thomas (Ms Nur Ashikin Abdul Rahim with him), of counsel for the defendants, took the position that the OS should be struck out under O. 18 r. 19(1), as plainly, clearly and obviously the matters complained of do not provide the plaintiffs with a sustainable cause of action recognised by the courts. For this proposition, they cited the following authorities:

(a) *Lim Cho Hock v. Speaker, Perak State Legislative Assembly* [1979] 1 LNS 45 HC;

(b) *Hj Salleh Jafaruddin v. Datuk Celestine Ujang & Ors* [1986] 2 CLJ 209; [1986] CLJ (Rep) 142 SC;

(c) *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener)* [2009] 4 CLJ 253 FC; and

(d) *Gobind Singh Deo v. Yang DiPertua, Dewan Rakyat & Ors* [2010] 9 CLJ 449 HC.

[10] Mr Kamarul Hisham Kamaruddin (Mr M M Athimulan, Mr Lim Kon Keen and Ms Siti Maspuah Maulan with him) submitted that the plaintiffs have a reasonable cause of action; and the court must hear and determine the OS on its merits.

[11] In essence, the learned High Court judge has struck out the OS on the basis of O. 18 r. 19(1)(a), on the ground that the OS discloses "no sustainable cause of action" and so it was a "plain and obvious case for the court to allow the striking out order". The relevant portion of the judgment reads as follows:

> 3. As this is an application for a striking out order under O. 18 r. 19 of the Rules of the High Court 1980, it is my duty to see whether the defendants have shown that the plaintiffs indeed have no sustainable cause of action against them. After reading all the cause papers and scrutinizing the parties written submissions as well as listening to their oral submissions, I am satisfied that this is a plain and obvious case for the court to allow the striking out Order.

[12] The above submissions and the High Court judgment under this head revolve around the resolution of the following question:

> Does the OS disclose a reasonable cause of action for it to be considered by the Court on merits?

[13] The governing procedure is to be found in O. 18 r. 19(1)(a), pursuant to which the court may at any stage of the proceedings order to be struck out, *inter alia*, any pleading or the indorsement of any writ in the action, on the ground that it discloses no reasonable cause of action. O. 18 r. 19 shall apply to an OS as if it were a pleading: O. 18 r. 19(3).

[14] Order 18 r. 19(2) provides that no evidence shall be admissible on an application under O. 18 r. 19(1)(a): See eg, *Tropical Profile Sdn Bhd v. Kerajaan Malaysia. Jabatan Kerja Raya Malaysia & Ors* [2008] 1 CLJ 513 HC; and [2007] 8 MLJ 419 HC; and *Indah Desa Saujana Corporation Sdn Bhd & Ors v. James Foong Cheng Yuen & Anor* [2008] 1 CLJ 651 CA. In dealing with an application under O. 18 r. 19(1)(a), the duty of the court is to consider the pleadings in a writ action; or, in the OS herein, the prayers sought by the plaintiffs, and to determine whether the OS is "obviously unsustainable": see eg, *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7 SC.

[15] Now, it is appropriate for us to embark on an analysis of the authorities cited for the defendants.

[16] First, the High Court judgment delivered by Abdoolcader J (later SCJ) in *Lim Cho Hock*, *supra*, considered two issues *viz* procedure and jurisdiction. On the issue of procedure, which is relevant to the Appeal before us, it was held that a declaration can only be made by OS under the provisions of the (then) O. 54A r. 1A of the (then) Rules of the High Court 1957 ie, "Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of any written law, may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed." There, the proceedings by OS were incompetent as they did not come within the requirements of O. 54A r. 1A. In the result, the OS, being misconceived, failed in limine. That being the case, we are unable to see how the defendants could enlist any assistance from the above High Court judgment.

[17] Next, the subject matter in *Haji Salleh Jafaruddin*, *supra*, was an application for judicial review under O. 53, seeking an order for prohibition. There was no trace of O. 18 r. 19(1) being invoked to strike out the notice of motion which was indeed heard on merits.

[18] The third case is *YAB Dato' Dr Zambry*, *supra*, where an OS sought, *inter alia*, a declaration under s. 41 of the Specific Relief Act 1950 (s. 41) and O. 15 r. 16 that the respondent's decision, in suspending the applicants from attending the Perak State Legislative Assembly, was against the laws of the Constitution of Perak and therefore null and void. Again, the OS was not disposed of under O. 18 r. 19(1). Instead, it was heard on merits.

[19] Defendants' fourth and final authority was *Gobind Singh Deo*, *supra*, in which the plaintiff sought declaration to the effect that the plaintiff's suspension as Member of Parliament for 12 months was null and void and that he was entitled to his remuneration and allowances. Again, there was no application to strike out the plaintiff's OS under O. 18 r. 19(1). It was also heard on merits.

[20] Our analysis leads us to the view that the aforesaid four authorities, relied on by the defendants herein, are of no assistance to them. On the contrary, these authorities clearly militate against them, especially the second to the fourth authorities which had been heard and disposed of on merits, and not under O. 18 r. 19(1)(a).

[21] A proper perusal of the OS would immediately bring into focus the plaintiffs' allegations of the defendants' breaches of the SO, the fundamental rules of natural justice and the Selangor State Constitution. These alleged breaches clearly disclose a reasonable cause of action requiring further ventilation by the parties on merits, pertaining to substantive issues or questions of law of constitutional importance which are in a developing or revolving state. These questions are not unarguable. The determination on such alleged breaches are eminently unsuitable for summary disposal under the striking out procedure. So long as the OS raises some questions fit to be decided by a judge, the mere fact that the case is weak, and not likely to succeed, is no ground for striking out. A court should not strike out a claim or an OS concerning an area of law which is in the process of development or evolution, as in the instant Appeal. In these circumstances, the plaintiffs should not be summarily deprived of his opportunity to argue their case: See *Malaysian Court Practice 2008*, Vol 1 pp 1553, 1555 and 1556. Our answer to the above question posed in para [12] is in the affirmative.

Declaratory Judgment

[22] In the alternative, for the sake of completeness, in response to questions posed by us pertaining to O. 15 r. 16, the defendants contended that they could still invoke the striking out procedure although the plaintiffs were merely seeking a declaratory judgment by way of declarations under O. 15 r. 16.

[23] The plaintiffs subscribed to the view that where the OS seeks declarations under s. 41 and O. 15 r. 16, there is no requirement to have a cause of action at all.

[24] Learned counsel for the respective parties herein had not addressed the learned judge on the legal effect of s. 41 and O. 15 r. 16. That being the case, the learned judge cannot be blamed for not expressing any opinion thereon.

[25] The question raised in the aforesaid submissions may be formulated as follows:

> Upon a true construction of s. 41 and O. 15 r. 16, where the OS prays for a declaratory judgment in the form of declarations, is it proper to strike out the OS on the ground that it discloses no reasonable cause of action?

[26] The substantive law that confers jurisdiction on our court to grant a declaratory judgment may be found in s. 41 which merits reproduction as follows:

> Discretion of court as to declaration of status or right
>
> 41. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

[27] The above substantive law is supplemented by the procedural law contained in O. 15 r. 16 which regulates "declaratory judgment" in the following words:

> 16 Declaratory judgment (O. 15 r. 16)
>
> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

[28] A declaratory judgment merely states the rights or legal position of the parties as they stand without altering them in any way: see *Gan Hwa Kian & Anor v Shencourt Sdn Bhd* [2007] 3 CLJ 538. 'A declaration can be used to ascertain and determine the legal rights of parties or to determine a point of law': *Brett Andrew Macnamara v. Kam Lee Kuan* [2008] 7 CLJ 625; [2008] 2 MLJ 450 at 459 per Balia Yusof J (now JCA). By virtue of s. 41 and O. 15 r. 16, the court's jurisdiction to make a declaratory order is unlimited, subject only to its own discretion. The court has power to grant a declaration irrespective of whether an application has a cause of action or not and even if a cause of action does not exist at the time of the filing of an application: see eg, *Tan Beng Sooi v. Penolong Kanan Pendaftar (United Merchant Finance Bhd, Intervener)* [1995] 2 CLJ 846; *BSN Commercial Bank (M) Bhd v. Pentadbir Tanah Daerah, Mersing* [1997] 3 CLJ (Supp) 1; and *Cekal Berjasa Sdn Bhd v. Tenaga Nasional Bhd* [2006] 8 CLJ 69; [2006] 4 MLJ 284 at 294, per Abdul Malik Ishak J (now JCA).

[29] The jurisdiction to make a declaration under the rule is not confined to cases in which the plaintiff has a complete and subsisting cause of action: *Guaranty Trust Co of New York v. Hannay* [1915] 2 KB 536, CA (Eng); *Dewan Singh v. M Thynappa Ltd & Yeo Teck Chiang* [1939] 1 LNS 20; *Hj Hussin Hj Ali & Ors v. Datuk Haji Mohamed Yaacob & Other Cases* [1983] 2 CLJ 68; [1983] CLJ (Rep) 165, FC; *Karpal Singh v. Sultan of Selangor* [1987] 2 CLJ 342; [1987] CLJ (Rep) 686; and *Tengku Mariam Tengku Sri Wa Raja & Anor v. Commissioner for Religious Affairs, Trengganu & Ors* [1968] 3 LNS 1. Our answer to the question set out in para [25] is in the negative.

Conclusion

[30] Based on the foregoing grounds, we allow this appeal, set aside the striking out order of the High Court and substitute it with an order that the OS be reinstated and remitted to the High Court and, with the utmost respect, to be heard and disposed of on merits before another judge. Parties have agreed that there shall be no order as to costs. Deposit to be refunded to the plaintiffs (appellants).